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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

No. 528.

THE OHIO OIL COMPANY, a Corporation, and MAGNOLIA PETROLEUM COMPANY, a Corporation (Appellants),
Petitioners,

vs.

GUY A. THOMPSON, Trustee, Missouri-Illinois Railroad Company, Debtor (Appellee),
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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The decision of the Circuit Court of Appeals of the Eighth Circuit sought to be reviewed is reported in 120 Fed. (2) 831. The gist of the opinion is thus stated in the concluding paragraph:

> "The question calls only for the construction and enforcement of the mandate; and it is for the District Court to which the mandate is directed to construe and execute such mandate; and if that court misconstrues or refuses to enforce it or attempts to 'vary it' or 'to intermeddle with it,' it is for the Supreme Court alone to construe and enforce its own mandate."

Petitioners do not question the correctness of the legal conclusion of the Court of Appeals, but question the factual conclusion of said Court that the issue before it involves solely an interpretation of the Supreme Court's mandate in the former appeal.

Complaining of the Court of Appeals' decision sought to be reviewed, Petitioners, on page 8 of their petition, state:

> "That court dismissed the appeal for want of jurisdiction, for the reason that the question presented on the appeal involved the construction and interpretation of the opinion and mandate of this court in the case of Guy A. Thompson, Trustee, v. Magnolia Petroleum Co. et al., 309 U. S. 478."

Further, on page 13, they state:

> "It therefore seems indisputable, despite the decision of the Circuit Court of Appeals, that the order complained of related to issues and questions not determined by the opinion and mandate of this court in the prior proceedings."

We therefore understand that the sole question sought to be reviewed is whether the action of the lower court complained of involved the interpretation of this Court's opinion and mandate, or whether it involved matters *dehors* the opinion and mandate. It is therefore necessary to briefly refer to the opinion and mandate of this Court on the previous appeal (*Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478). This Court there specifically affirmed the decree of the District Court "except in so far as it provides for adjudication of the disputed ownership in the bankruptcy court." The effect was to specifically approve the District Court's holding—

> (a) That adverse claimants should be enjoined from interfering with the removal and sale of the oil pending final determination of the controversy; and

(b) That the cost of drilling, producing and marketing the oil should be paid out of the gross proceeds, and that only the net proceeds should be retained for the account of the ultimately successful claimant.

This Court, by its opinion and mandate, put its stamp of approval upon the lower court's decision with respect to each of the foregoing issues, but directed that the cause be returned to the District Court

> "With instructions to modify its order so as to provide appropriate submission of the question of fee-simple ownership of the right of way to the Illinois State Court" (Rec. p. 47).

In conformity with this Court's opinion the District Court thereupon retained jurisdiction to control the marketing and sale of the oil and retained jurisdiction to permit the production cost to be paid out of the gross proceeds of the oil so removed, holding the net proceeds as a trust fund for the account of whom concerned. In strict conformity with the mandate of this Court, the Bankruptcy Trustee, pursuant to directions of the District Court, proceeded in the Illinois State Courts with suits to quiet title.

Petitioners, professing to misconstrue the order entered by the Bankruptcy Court, sought through the filing of counterclaims to have all issues determined by the Illinois State Court, including the right to enjoin further production and the right to determine whether the cost of drilling, producing and marketing the oil should be borne out of the gross proceeds from the sale of the oil taken from the right of way property. It was never the intention of the District Court that it be thus divested of its jurisdiction with respect to these latter matters, and upon the aforesaid counterclaims being called to its attention the District Court clarified its previous order by the supplemental order quoted on page 7 of Petitioners' Brief (Rec. p. 59) in part as follows:

"• • • It being the intention of this order to permit to be adjudicated in the courts of Illinois solely 'the question of fee-simple ownership of the right of way,' and this court reserves exclusive jurisdiction to determine whether Trustee shall be permitted to continue to remove and market oil from said right of way or to drill additional wells thereon, and to determine to what extent the cost of the drilling, conserving, and marketing said oil shall be paid out of the gross proceeds of said oil."

It is therefore apparent that the present appeal of Petitioners is bottomed on the *alleged* error of the District Court in interpreting this Court's opinion and mandate. If so, the Court of Appeals had no jurisdiction.

The Court of Appeals so held, and we are confident that this Court will find no reason to review its decision.

Respectfully submitted,

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Attorneys for Respondent.